

REMARKS

Claims 1, 2 and 11-22 are pending in the application. The Examiner maintains his rejection of Claims 1, 2 and 11-22 under 35 U.S.C. §103(a) as being unpatentable over Sawashashi et al. (EP 0 682 418 A2) in view of Bruckert (U.S. Patent 5,751,763).

Prior to addressing the specific issues raised in the Office Action, Applicants respectfully submit that, as per the telephone conferences conducted on August 8, 2003 between Applicant's representative, Douglas M. Owens, Esq., and William Trost, SPE, it was noted and agreed that a Response filed on July 15, 2003 was misfiled in the present application, and it was not the intention of the Applicants to enter in this application the amendments or remarks contained therein. Additionally, it is requested that the Advisory Action dated July 24, 2003 be withdrawn, or in the very least, disregarded in the application, as it is responsive to a misfiled Response. Examiner's cooperation in this matter is gratefully appreciated. Claims 1, 2 and 11-22 remain pending in this application.

In addition, the Examiner has maintained his objection to figures 1A, 1B, 7 and 8 as not being labeled "Prior Art", and has disapproved of the substitute drawings submitted with the prior Response. The Examiner bases his objection on outdated Patent Office requirements of proposed changes being first made in red ink for approval. This procedure has been changed by a procedure of submitting substitute drawings in a clean form, and stating the changes in the body of the Response, which is the procedure correctly followed in the prior Response. Withdrawal of the objections is respectfully requested.

With respect to the rejections of independent Claims 1, 11, 12, 14 and 22, the Examiner continues his position that Sawashashi et al. in view of Bruckert discloses the elements recited in the claims. Each of the independent claims recites that a base station changes a reference value for reverse closed loop power control. The Examiner states that the "P(T)" of Sawashashi et al. is a changing reference value, and therefore renders the claims unpatentable. The Examiner is taking a broad reading of "reference value" in both the claims of the present application and the cited reference. The present application clearly states that a reference value is defined as $\theta_1 = (E_c/N_o)_{\text{required}}$, or fractions thereof. On the other hand, Sawashashi et al. states that P(T) is a calculated value, and that its reference value is P_{max} , which is a fixed value. Throughout section

7, beginning on page 3 of the Office Action, the Examiner cites several U.S. court cases to support his position. Each of the citations states, in one form or another, that during prosecution, an Examiner can give the broadest meaning to terms contained in pending claims. Applicants respectfully disagree with the Examiner defining "reference value" as used in Sawashashi et al., a use that is inconsistent with its specification. Claims 1, 11, 12, 14 and 22 have been amended to assist the Examiner in distinguishing the claims of the present application from the cited reference. Withdrawal of the rejections of Claims 1, 11, 12, 14 and 22 is respectfully requested.

Independent Claims 1, 11, 12, 14 and 22 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2, 13 and 15-21, these are likewise believed to be allowable by virtue of their dependence on their respective amended independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2, 13 and 15-21 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1, 2 and 11-22, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,



Paul J. Farrell
Reg. No. 33,494
Attorney for Applicant

DILWORTH & BARRESE
333 Earle Ovington Blvd.
Uniondale, New York 11553
Tel: (516) 228-8484
Fax: (516) 228-8516

PJF/MJM/dr